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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/893,336	06/27/2001	Daniel W. Doll	1082-496	1135
7590	02/23/2004			
Joseph A. Walkowski Traskbritt, PC P. O. Box 2550 Salt Lake City,, UT 84110			EXAMINER MILLER, EDWARD A	
			ART UNIT 3641	PAPER NUMBER

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/893,336

Applicant(s)

DOLL ET AL.

Examiner

Edward A. Miller

Art Unit

3641

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☒ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see next page.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-17, 19-22, 24, 25, 27-29 and 31-48.Claim(s) withdrawn from consideration: 18, 23, 26 and 30.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

1. The amendment filed January 16, 2004 under 37 CFR 1.116 in reply to the final rejection has been considered but is not deemed to place the application in condition for allowance and will not be entered because:
2. There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
3. The proposed amendment raises new issues that would require further consideration and/or search. This includes the possibility of new matter. This issue relates to the new, intermediate scope generic language for the dinitroaromatic compounds. No basis for the proposed changes has been pointed out, and none is apparent. This would require reexamination, as would the newly limited claims as to prior art. While subject matter in claims limited to dinitroanisole as dinitroaromatic was indicated as potentially allowable, the new language is not so limited, but of intermediate scope, also requiring reconsideration for improved results. The changes would clearly require reexamination.
4. Further, assuming *arguendo* the intermediate scope language were allowable, this would require examination of claims that were previously nonelected, requiring further reexamination.
5. The arguments presented are not convincing of error in the final rejection in part for reasons of record, and in part since they rely on the entry of the proposed amendments.
6. Unfortunately, almost all recent after final replies in new image files are delayed more than a month before reaching the examiner, compared to less than a week typically for a paper application. The delay from the new, "improved" image processing is regretted; this is something the examiner has no control over. Although applicants' reply was submitted on January 16, 2004, it was not forwarded to the examiner for consideration until February 17, 2004. The examiner has provided expedited processing to mitigate the failures caused by the electronic scanning and processing system used by the Office.

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7. Further, although applicants refer to two terminal disclaimers, only the one for the related patent appears in the electronic image file. As applicants were charged two fees for disclaimers, it appears that applicants actually sent in both, as noted in applicants' remarks. However, the second disclaimer relating to the copending application has apparently been lost, and does not appear in the e-file. This error is being looked into, but no quick or easy solution is apparent to this examiner. In any event, after review, the submitted disclaimer which is in the electronic record appears okay, but final determination of this awaits recovery of the other, missing disclaimer, and formal approval of both. The examiner regrets that the Office has implemented such a poor electronic processing system, or such a poorly managed electronic system, or both, wherein papers are being lost in unprecedented numbers, in this examiner's <sup>almost</sup> 37 years experience. Recently, this examiner received after final replies in 5 applications. One case got through in paper form, and was promptly and readily processed within a week or two of the filing date of the reply. All of the other four had scanning errors of some type, and cost both the applicants and the examiner a great deal of extra time for the examiner's action. One might think that applicants would point out the problems caused by the implementation of the new system and demand better of the Acting Director of the USPTO and the Commissioner for Patents. In view of the reasons for non-entry, the disclaimer <sup>deemed</sup> issues are moot, rather than adding to the delay to date in answering applicants' reply.

8. Any inquiry concerning either this or an earlier communication from the Examiner should be directed to Examiner Edward A. Miller at (703) 306-4163. Examiner Miller may normally be reached Monday-Thursday, from 10 AM to 7 PM.

If attempts to reach Examiner Miller by telephone are unsuccessful, his supervisor Mr. Carone can be reached at (703) 306-4198. If there is no answer, or for any inquiry of a general nature or relating to the application status, please call the Group receptionist at (703) 308-1113.

Miller/em  
February 20, 2004



EDWARD A. MILLER  
PRIMARY EXAMINER